



April 18, 2002

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Theodore Lucas
Director
Department of Procurement Management
111 N.W. First Street
Suite 2350
Miami, FL 33128

RE: REQUEST FOR ADVISORY OPINION 02-39

Dear Mr. ^{Ted} Lucas:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on April 17, 2002 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding the application of the Cone of Silence to the use of Internet Portal Providers in reverse auctions.

In your letter, you advised the Commission that the Department of Procurement Management wants to use online auctions as an alternative to conventional bidding. Under this process, sellers bid on an opportunity to provide goods or services to the county. Sellers will be able to see the prices bid by competitors but the identities of the other companies will be protected.

The Department will hire an Internet Portal Provider (IPP) to manage the technical aspects of the online auction. The IPP will be able to answer technical computer questions regarding the online process but will not answer substantive questions regarding the solicitation. The IPP will provide assistance prior to the date of the

online auction and may answer technical questions that arise during the auction. The department will designate the IFP as a procurement agent on solicitation documents. The solicitation documents will contain general process and procedure information on the online process in the special conditions section.

The Commission found the Department of Procurement Management may designate Internet Portal Providers as procurement agents in accordance with the Cone of Silence. As a procurement agent, an IFP may answer verbal questions regarding process or procedural matters contained in the solicitation document.

Section 2-11.1(t) provides that Section 2-11.1(t)(1)(a) provides that the "Cone of Silence is hereby defined to mean a prohibition on a) any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the County's professional staff including but not limited to the County Manager and his or her staff and b) any communication regarding a particular RFP, RFQ or bid between Mayor, County Commissioner or their respective staff and any member of the County's professional staff including, but not limited to the County Manager and his or her staff. "

Section (t)(1)(a)(vi) provides that notwithstanding the foregoing, the Cone of Silence shall not apply to "communications regarding a particular RFP, RFQ or bid between any person and the Vendor Information Center staff, the procurement agent or contracting officer responsible for administering the procurement agent for such RFP, RFQ or bid provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document."

Accordingly, an IPP may be designated a procurement agent by the department and answer technical questions of process or procedure contained in the special conditions section of the solicitation document. Further, the IPP may answer written or e-mail questions concerning technical matters outside the scope of the information provided in the solicitation documents.

This opinion construes the Miami-Dade Conflict of Interest and Code of Ethics ordinance only and is not applicable to any conflict under state law. Please contact the State of Florida Commission on Ethics if you have any questions regarding possible conflicts under state law.

If you have any questions regarding this opinion, please call the undersigned at (305) 579-2594 or Ardyth Walker, Staff General Counsel at (305) 350-0616.

Sincerely Yours,



ROBERT MEYERS
Executive Director